85-1174

Supreme Court, U.S.
FILED
JAN 9 1986
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

PAUL WYATT, SR.
Petitioner

-VS-

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT COURT

Court of Appeals No. 83-8789

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STATEMENT OF QUESTION PRESENTED

Whether it was plain error for the district judge to admit evidence, including the judgment of conviction, of the petitioner's plea of nolo contendere in another case as proof of intent, in light of the provisions of F.R.E. 410 and F.R. Crim.P. 11(e)(6).

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1985
No.

PAUL WYATT, SR.
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

REFERENCE TO OPINION BELOW

The opinion below sought to be reviewed is *United States* v. *Wyatt*, 762 F2d 908 (1985), and was issued on June 11, 1985.

JURISDICTION OF THE COURT

Jurisdiction to review this Opinion is conferred upon this Court by 28 USC 1254.

Petitioner filed for Rehearing and Suggestion for Rehearing En Banc, which was denied by Order entered November 25, 1985.

The Judgment affirming petitioner's conviction was entered on June 11, 1985, and issued as Mandate on December 4, 1985.

An order granting Petitioner's Motion for Recall of Mandate was granted on December 20, 1985, said stay to continue until January 24, 1986, providing further that said stay shall continue if within said period a petition for certiorari shall be filed with the Clerk of the United States Supreme Court.

EVIDENTIARY AND CRIMINAL PROCEDURE RULE PROVISIONS INVOLVED

FEDERAL RULES OF EVIDENCE, RULE 410(2):

> Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:
>
> * * *
>
> (2) a plea of nolo contendere;

FEDERAL RULES OF CRIMINAL PROCEDURE, RULE 11(e)(6):

> Except as otherwise provided in this paragraph, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:
>
> * * *
>
> (B) a plea of nolo contendere;

STATEMENT OF THE CASE

Petitioner was found guilty by a jury of Conspiracy to Import and Importing Marijuana and Conspiracy to Possess With Intent to Distribute Marijuana and Cocaine. He was sentenced to five (5) years imprisonment for each Count, said terms to be served concurrently. The Petitioner was also ordered to pay a fine of fifteen thousand ($15,000.00) dollars for each Count.

In its case in chief, the government moved for admission on the issue of intent evidence, including the judgment of conviction, of a plea of Nolo Contendere made by PAUL WYATT in a Florida District Court to charges of attempted possession of cocaine. In the course of this motion, the prosecutor admitted that the facts underlying the Florida charges did not support a strong criminal case against PAUL WYATT. The government argued that the fact that PAUL WYATT pled Nolo Contendere to the Florida case was highly probative of PAUL WYATT's intent to commit the Georgia charges, at issue herein.

Counsel for Petitioner objected to admission of evidence relating to the Florida case, arguing that any probative value was outweighed by unfair prejudice.

The trial court reserved judgment on the government's motion. Thereafter, the government renewed the said motion to admit the Florida evidence and the conviction pursuant to the nolo plea.

Over Petitioner's counsel's objections, the trial court granted the motion. The trial judge specifically found that the government had a substantial need for additional proofs on the issue of intent.

The government introduced evidence of PAUL WYATT's Nolo Contendere plea and conviction thereon. The government also introduced detailed testimony relating to the Florida charges from two Florida law enforcement officials. In addition to the Florida plea and conviction, the government

introduced the Florida Indictment, PAUL WYATT's Deputy Sheriff's Badge seized in Florida; and photographs of an airplane seized in the Florida case.

At the close of all proofs, the jury found PAUL WYATT guilty of Counts Two and Three of the Indictment.

REASONS FOR ALLOWANCE OF THE WRIT

I.

A review of the Government briefs, our own and our considerable research file in this cause suggests that the United States Supreme Court has never addressed the principal question involved in the instant case; namely, whether F.R.E. 410 and F.R. Crim.P. 11(e)(6) *supra*, permit a sled-length use of a nolo plea, including the judgment of conviction itself and the underlying facts and circumstances, to be used in the government case in chief in a separate criminal case.

No such Supreme Court case is cited or relied upon by either side in the trial or appellate proceedings in the instant cause.

It is submitted that the interests of the orderly and uniform administration of justice would be significantly advanced by a considered opinion from the highest judicial authority.

Further regarding said Rule 11(b)(6) and directly on the point, "the [Senate - House] conference agrees that neither a plea nor the offer of a plea ought to be admissable *for any purpose*." Emphasis supplied, *Moore's Federal Practice, Rules Pamphlet*, Part 3, p. 112.

Therefore, it is submitted that the result reached by this Honorable Court cannot possibly be reconciled with the unambiguous provisions of both F.R.E. 410 and F.R.Crim.P. 11(e)(6)(B). The effect of this assuredly will be not only rendering the rules virtually meaningless, but to frustrate and impede the accomplishment of the policy of promoting the prompt disposition of criminal cases by compromise.[1]

[1] Exclusion of offers to plead guilty or nolo has as its purpose the promotion of disposition of criminal cases by compromise. As pointed out in McCormick Sec. 22251, p. 453.

II.

The Court of Appeals Opinion in the instant cause is in conflict with leading opinions of other circuit and trial courts.

This decision, reported at 762 F.2d 808 (11th Cir. 1985), is inconsistent with, by way of example only, *Graham* v. *United States*, 325 F.2d 922 (6th Cir. 1963); and *United States* v. *Lair*, 195 F 47 (8th Cir. 1912).

In *Graham, supra*, it was held:

> It is true that a nolo contendere plea permits a judgment of conviction and the imposition of punishment the same as if a plea of guilty had been made, *Hudson* v. *United States*, 272 U.S. 451, 47 S.Ct. 127, 71 L.Ed. 347. However, *it is has been held that it is not admissable to aid proof of guilt in another proceeding* (at p. 928, emp. supplied). *United States* v. *Lair*, 195 F. 47, 52 (CA 8, 1912); *Mickler* v. *Fahs*, 243 F.2d 515, 517 (CA 5, 1957); *Piassick* v. *United States*, 253 F.2d 658, 661, (CA 5, 1958).

Similarly, in *Lair*, the Court stated:

> [A] plea of nolo contendere is in effect a plea of guilty to every essential element of the offense well pleaded in the charge against him, and warrants his conviction thereof without more . . . though the conviction cannot rightly be used against him in any other case. Such is the effect of the plea of nolo contendere. (Citations omitted).

United States v. *Lair, supra*, at page 52.

Though not a circuit decision, the well-reasoned result in *Greenberg* v. *Cutler-Hammer, Inc.*, 403 F. Supp. 1231 (E.D. Wis. 1975) is further authority which calls for consideration by the United States Supreme Court.

Relying upon FRE 803(22), the judge in *Greenberg* held:

> The finding of guilt upon which the defendants rely is based upon a judgment of conviction against Universal

> Relay Corp. in 73-Cr-175 upon a plea of nolo contendere. Rule 803(22), Federal Rules of Evidence, makes clear that evidence of a final judgment based upon a plea of nolo contendere cannot be used 'to prove any fact essential to sustain the judgment. . . .' See also 4 J. Weinstein & M. Berger, Weinstein's Evidence Sec. 803(22)[01], at 803-233 (1975). *Greenberg*, *supra*, at 1234.

It is also significant that *Graham*, *supra*, at p. 927, found the use of the nolo plea to be "plain error," contrary to the opinion in the instant cause.

Lastly, *Wyatt*, *supra*, (the instant cause), cannot be reconciled with earlier decisions of the Fifth Circuit Court of Appeals. See, e.g., *United States* v. *Morrow*, 537 F.2d 120 (5th Cir. 120, 1976) wherein it was held to be "plain error" to use a nolo plea to establish intent; and *Piassick* v. *United States*, 253 F.2d 658 (5th Cir. 1958).

It is respectfully submitted that the diversity of judicial opinion as reflected in this Section contributes to an uneven or unpredictable construction and application of the subject Federal rules.

This consequence diminishes the efficient administration of justice and does not promote the general policy of disposing of criminal cases by the nolo contendere plea, where appropriate.

Further, should the United States Supreme Court choose to address the issues presented, an interpretation and result would follow to the benefit of all United States Circuit and District courts.

CONCLUSION

It is respectfully urged to this Court that the foregoing issue involves important questions of rule construction and the proper administration of justice in the federal courts that should be addressed and settled by this Court.

RELIEF SOUGHT

Petitioner respectfully prays this Court issue its Writ of Certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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Dated: January 8, 1986

APPENDIX

UNITED STATES of America,
Plaintiff-Appellee,

v.

Paul WYATT, Defendant-Appellant.

No. 83-8789.

United States Court of Appeals,
Eleventh Circuit.

June 11, 1985.

Appeal from the United States District Court for the Southern District of Georgia.

Before KRAVITCH, CLARK and WRIGHT*, Circuit Judges.

EUGENE A. WRIGHT, Circuit Judge:

FACTS

Paul Wyatt was convicted by a jury of conspiracy to import marijuana and cocaine (count 2) and conspiracy to possess marijuana and cocaine with intent to distribute (count 3) in violation of 21 U.S.C. §§ 963, 841(a)(1), 952(a).

The prosecution relied principally on the testimony of undercover agent Ray Hammond. Wyatt admitted that he had discussions with Hammond concerning his own desire to participate in the drug conspiracy which he concedes existed. Wyatt asserted in defense that he was acting in his capacity as honorary deputy for the county Sheriff's Department.

He argues that all of his discussions with Hammond and subsequent involvement in the conspiracy were directed toward enticing the conspirators to land a plane laden with marijuana at the Twin Lakes Executive Airpark, a public airstrip run by Mr. Wyatt. Wyatt contends that, pursuant to a prior agreement with Sheriff Gunnells, if he provided

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* Honorable Eugene A. Wright, U.S. Circuit Judge for the Ninth Circuit, sitting by designation.

information to the Sheriff's Department leading to the seizure of an airplane containing contraband, the proceeds from the sale of the airplane would be used to buy a helicopter. Wyatt would then be retained to maintain and fly the helicopter for the Sheriff's Department. At trial, Sheriff Gunnells corroborated Wyatt's claim about a prior agreement.

To prove Wyatt's intent to participate in the drug conspiracy, the government introduced a judgment of conviction entered upon a plea of nolo contendere to charges of conspiracy to traffic in cocaine in Florida. The government also introduced extensive evidence concerning the facts that underlay the attempted purchase of cocaine from undercover agents in Florida. Wyatt argues on appeal that introduction of that evidence was reversible error.

ANALYSIS

The government moved pretrial to admit evidence of Wyatt's arrest, plea of nolo contendere, and subsequent conviction on the Florida drug charges. Wyatt objected to the offer as irrelevant and unduly prejudicial. He argued that the nolo plea did not reflect an admission of guilt, but he failed to object to the admission of the plea itself as violative of either Fed.R.Evid. 410 or Fed.R.Crim.P. 11(e)(6). Nor did he object to evidence of the judgment and plea on hearsay grounds.[1] The judge delayed ruling and later admitted the evidence at trial with a proper limiting instruction.

We review the decision to admit the extrinsic act evidence under Fed.R.Evid. 404(b), properly objected to at trial, for "clear abuse of discretion." *United States v. Hewes*, 729 F.2d 1302, 1314 (11th Cir. 1984), *cert. denied*, — U.S. —, 105 S.Ct. 790, 83 L.Ed.2d 783 (1985). We review the remaining evidentiary errors not specifically objected to at trial for "plain error" only. Fed.R.Crim.P. 52(b); *United States v. Sans*, 731 F.2d 1521, 1532 (11th Cir. 1984), *cert. denied*, — U.S. —, 105 S.Ct. 791, 83 L.Ed.2d 785 (1985).

1. Federal Rule of Evidence 803(22) expressly refrains from exempting "[e]vidence of a final judgment, entered . . . upon a plea of nolo contendere" from the otherwise exclusionary effect of Fed.R.Evid. 802.

I. *Admissibility Under 404(b)*

Rule 404(b)[2] provides that evidence of crimes or other bad acts is inadmissible to prove character but admissible to prove intent. Fed.R.Evid. 404(b); *United States v. Chilcote*, 724 F.2d 1498, 1502 (11th Cir.), *cert. denied*, — U.S. —, 104 S.Ct. 2665, 81 L.Ed.2d 370 (1984). The government must first prove that the defendant actually committed the offense. *United States v. Dothard*, 666 F.2d 498, 502 (11th Cir. 1982). However, this presents a jury question "unless the judge becomes convinced that the jury could not reasonably find that the defendant committed the alleged prior offense." *United States v. Byers*, 600 F.2d 1130, 1132 (5th Cir. 1979); *Dothard*, 666 F.2d at 502.

The evidence showed that three times on one day Wyatt piloted a plane with three passengers to Vero Beach, Florida, enabling them to negotiate with undercover police officers for the purchase of cocaine. Arresting officers testified that Wyatt was apprehended in the pilot seat, attempting to leave after observing his passengers' arrest. A bag containing $25,000 was found between the pilot's and passengers' seats.

In giving his version of the incident, Wyatt testified that he was an unwitting pilot. That was weakened by inconsistencies in his testimony and there was ample evidence to support a jury finding that Wyatt intentionally participated in the Florida drug venture.

Evidence of an extrinsic act still must meet a two-pronged test to be admissible. The act must be relevant to an issue other than character and the probative value must not be substantially outweighed by undue prejudice. *United States v. Beechum*, 582 F.2d 898, 916-17 (5th Cir.1978) (en

2. Fed.R.Evid. 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

banc) *cert. denied*, 440 U.S. 920, 99 S.Ct. 1244, 59 L.Ed.2d 472 (1979); *United States v. Roe*, 670 F.2d 956, 967 (11th Cir. 1982), *cert. denied*, 459 U.S. 856, 103 S.Ct. 126, 74 L.Ed.2d 109 (1983).

A. *Relevance*

When the issue is intent the test for relevance is whether the extrinsic acts and the charged offense require the same type of intent and are close in time. *United States v. Mitchell*, 666 F.2d 1385, 1389 (11th Cir.), *cert. denied*, 457 U.S. 1124, 102 S.Ct. 2943, 73 L.Ed.2d 1340 (1982).

1. *Intent*

Wyatt's intent to engage in the charged drug conspiracy was the central disputed issue. The extrinsic offense, an aborted attempt to purchase cocaine, involved the same type of intent. His participation in the Florida incident is highly relevant to his intent in the charged conspiracy. *See United States v. Corbin*, 734 F.2d 643, 655-56 (11th Cir.1984).

2. *Temporal Proximity*

The Florida incident occurred two months after Wyatt's arrest on these charges. The fact that it occurred after the charged offenses is not dispositive. *United States v. Terebecki*, 692 F.2d 1345, 1349 (11th Cir.1982), *accord United States v. Hines*, 717 F.2d 1481, 1489 (4th Cir.1983), *cert. denied*, — U.S. —, 104 S.Ct. 2656, 81 L.Ed.2d 363 (1984); *United States v. Bridwell*, 583 F.2d 1135, 1140 (10th Cir. 1978). When the issue is intent, subsequent evidence is often highly probative. *Bridwell*, 583 F.2d at 1140. The district court was well within its discretion in finding relevant the drug conspiracy offense, occurring only two months after Wyatt's prior arrest. *See Terebecki*, 692 F.2d at 1349 (extrinsic offense 15 months after the charged offense not too remote).

B. *Probative v. Prejudicial*

Finally, the court must determine that the probative value of the evidence is not outweighed by undue prejudice. *Dothard*, 666 F.2d at 502. "This determination lies within the sound discretion of the trial court and calls for a 'commonsense assessment of all the circumstances surrounding

the extrinsic offense,' including prosecutorial need, the overall similarity between the extrinsic act and the charged offense, and the temporal proximity of the two." *Id.* at 502-03 (quoting *Beechum*, 582 F.2d at 914-15).

The district judge considered the facts carefully. "The offenses were almost exactly identical; they occurred only [two] months apart; and intent was a critical issue at trial." *United States v. Astling*, 733 F.2d 1446, 1457 (11th Cir.1984). The decision to admit the evidence was well within the court's discretion.

C. *Effect of Nolo Plea on 404(b) Admissibility*

The government could not have used the nolo plea to "prove that [Wyatt] had admitted his guilt by his *plea*" and thereby meet is initial burden of proving the defendant committed the act. *United States v. Williams*, 642 F.2d 136, 139 (5th Cir. Unit B 1981) (emphasis in original). That would violate Fed.R.Evid. 410 and Fed.R.Crim.P. 11(e)(6).

The question is whether the plea somehow insulates the underlying facts from admissibility under Fed.R.Evid. 404(b). We hold it does not.

An extrinsic act need not result in criminal liability to be admissible under Rule 404(b). *United States v. Roe*, 670 F.2d at 966; *Beechum*, 582 F.2d at 902 n. 1. The government was not bound to prove that Wyatt "committed the extrinsic offense . . . beyond a reasonable doubt." *United States v. Astling*, 733 F.2d at 1457.

Had Wyatt been tried *and* acquitted of the Florida offense after trial in this case, the evidence in that case would still have been admissible. *Smith v. Wainwright*, 568 F.2d 362, 363 (5th Cir.1978).[3] The same result would obtain

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3 In *Albert v. Montgomery*, 732 F.2d 865, 869-70 (11th Cir.1984), we applied *Wingate v. Wainwright*, 464 F.2d 209 (5th Cir.1972), and held that prior act evidence is *not* admissible when the defendant was tried and acquitted for the extrinsic act *before* the trial in which the evidence is sought to be admitted. We so held based on concepts of collateral estoppel embodied in the double jeopardy clause, not on an interpretation of Rule 404(b).

(Footnote 3 continued on page 6a)

had Wyatt been arrested but not yet tried, *id.*, or accused but not charged. *See, e.g., United States v. Edwards*, 696 F.2d 1277, 1280 (11th Cir.), *cert. denied*, — U.S. —, 103 S.Ct. 1884, 76 L.Ed.2d 813 (1983). Even had Wyatt been arrested but not brought to trial, the evidence would be admissible. *See United States v. Braithwaite*, 709 F.2d 1450, 1455-56 (11th Cir.1983). It would be anomalous to exclude the evidence here because of Wyatt's nolo plea.

We find support for our conclusion in *United States v. Williams*, 642 F.2d at 138-140. There we determined that a conviction based upon a nolo plea was admissible for impeachment purposes under Fed.R.Evid. 609(a), although "[w]ere it pertinent . . . the prosecutor could not prove that appellant had admitted his guilt by his *plea*." *Id.* at 139 (emphasis in original). *See also United States v. Morrow*, 537 F.2d 120, 141 n. 31 (5th Cir.1976) (dictum implied the underlying facts admissible even if plea is not), *cert. denied*, 430 U.S. 956, 97 S.Ct. 1602, 51 L.Ed2d 806 (1977).

The policies behind Fed.R.Evid. 410, 803(22) and Fed.R.Crim.P. 11(e)(6) are sufficiently fostered by precluding the use of the plea to prove guilt. The defendant is in no way harmed by the plea and compromises are encouraged.[4] The admissibility of the underlying facts is unaffected by the nolo plea.

(Footnote 3 continued from page 5a)

Other circuits have allowed the evidence even after a prior acquittal. *See, e.g., United States v. Van Cleave*, 599 F.2d 954, 957 (10th Cir.1979). The rationale is that the prior acquittal may reflect technical defects in the case or the higher (beyond a reasonable doubt) standard of proof. *See generally* 2 J. Weinstein & M. Berger, *Weinstein's Evidence* ¶ 404[10] at 404-58 (1982 ed.) (authors characterize this as majority rule).

4 Rule 410 is designed to promote the "disposition of criminal cases by compromise." Fed.R.Evid. 410, advisory committee note. Rule 410 "gives effect to the principal traditional characteristic of the nolo plea, i.e., avoiding the admission of guilt which is inherent in pleas of guilty." *Id.* Preventing the use of the plea itself promotes these policies without overly hampering prosecution.

II. *Objections Not Made at Trial*

"Plain error" involves a "deficiency" so "obvious and substantial" that "the fairness or integrity of the trial" is affected. *United States v. Granville*, 716 F.2d 819, 821 (11th Cir.1983) (per curiam); *Sans*, 731 F.2d at 1532. We take cognizance of such errors "only in exceptional circumstances to avoid a miscarriage of justice." *United States v. Chaney*, 662 F.2d 1148, 1152 (5th Cir. Unit B 1981) (quoting *Easton v. United States*, 398 F.2d 485, 486 (5th Cir.1958)). This is not such a case.

A. *Hearsay*

The judgment of conviction with accompanying notation of the nolo plea was not objected to on hearsay grounds at trial. It is admissible for its probative value. *United States v. Phillips*, 664 F.2d 971, 1026 (5th Cir. Unit B 1981), *cert. denied*, 457 U.S. 1136, 102 S.Ct. 2965, 73 L.Ed.2d 1354 (1982).

B. *Federal Rules of Evidence 410 and Criminal Procedure 11(e)(6)*

Objections on these grounds were not raised at trial. Although the government emphasized the nolo plea and resultant conviction before trial and thereafter before the judge out of the jury's presence, it was not emphasized at trial. Nor was it stressed in closing argument. Viewing the record as a whole, we cannot say the errors "were so rank that they should have been apparent to the trial judge without objection, or . . . strike at the fundamental fairness, honesty, or public reputation of the trial." *United States v. Perez*, 651 F.2d 268, 273 (5th Cir.1981).

In *United States v. Graham*, 325 F.2d 922 (6th Cir.1963), the court found plain error when "the district attorney not only told the jury that such a plea [nolo] was an admission of guilt and that the court would so instruct them, but went on to use the circumstances of the plea as the subject of extended and inflammatory argument." *Id.* at 928. The error here is far less egregious.

Wyatt had a full and fair opportunity to explain his version of the Florida incident. The plea was neither empha-

sized as an admission of guilt in front of the jury nor at closing argument. Had Wyatt preserved error, it may well have been harmless. It certainly did not taint the integrity of the trial.

AFFIRMED.

Order of the 11th Circuit
November 25, 1985

FOR THE ELEVENTH CIRCUIT

No. 83-8789

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

PAUL WYATT,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Georgia

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ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC (Opinion June 11, 1985, 11 Cir., 1985, _____ F.2d _____).
(November 25, 1985)

Before KRAVITCH, CLARK and WRIGHT*, Circuit Judges.

PER CURIAM:
(√) The Petition for Rehearing is DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is also DENIED.

Order of the 11th Circuit
November 25, 1985

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:
(s) Phyllis Kravitch
United States Circuit Judge

*Hon. Eugene A. Wright, U.S. Circuit Judge for the Ninth Circuit, sitting by designation.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 83-8789

D.C. Docket No. 182-41

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

PAUL WYATT,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Georgia

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Before KRAVITCH, CLARK and WRIGHT*, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of conviction of the said District Court in this cause be and the same is hereby, AFFIRMED.

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* Honorable Eugene A. Wright, U.S. Circuit Judge for the Ninth Circuit, sitting by designation.

Entered: June 11, 1985
For the Court: Spencer D. Mercer, *Clerk*
By: (s) Warren A. Godfrey
Deputy Clerk

ISSUED AS MANDATE: DEC 04 1985

Order of the 11th Circuit
December 20, 1985

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 83-8789

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

PAUL WYATT,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Georgia

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ORDER:

( ) The motion of appellant, Paul Wyatt, for ☐ stay ☒ recall and stay of the issuance of the mandate pending petition for writ of certiorari is DENIED.

(√) The motion of appellant, Paul Wyatt, for ☐ stay ☒ recall and stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including Jan. 24, 1986, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

( ) The motion of
for a further stay of the issuance of the mandate is GRANTED to and including
under the same conditions as set forth in the preceding paragraph.

( ) IT IS ORDERED that the motion of
for a further stay of the issuance of the mandate is DENIED.

(s) Phyllis Kravitch
UNITED STATES CIRCUIT JUDGE